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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,134

02/18/2004

John Santhoff

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EXAMINER

QURESHI, AFSAR M

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PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN SANTHOFF,
ALI TAHA, JOHN ELDON
and
CHARLES KRINKE

Application No. 10/782,134
Technology Center 2400

Mailed: April 1, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal*.
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 16, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

TIMELINESS/ FEES

An examination of the file reveals that the Appeal Brief filed September 10, 2008 is missing the necessary filing fee. The Patent and Trademark Office records only reflect payment of the Notice of Appeal and three month extension of time fees. The case is being returned to the Technology Center for a determination regarding whether or not the appeal should be dismissed for failure to pay the Appeal Brief fee.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellants filed an Appeal Brief dated February 27, 2007. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v) (2007), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter*. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters

The “Summary of Claimed Subject Matter” appearing on pages 3 and 4 of the Appeal Brief filed February 27, 2008 is deficient because it does not

separately map independent claims 7, 16 and 17 to the specification.

Correction is required.

Section 1205.03 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) for a determination as to whether the appeal should be dismissed for failure to pay the Appeal Brief fee;
- 2) to hold the Appeal Brief filed February 27, 2007 defective, as required by 37 CFR § 41.37(d);
- 3) to notify Appellants to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR § 41.37(c)(1)(v);
- 4) to acknowledge and consider any "paper" submitted by Appellants to correct the Appeal Brief; and
- 5) for such further action as may be required.

Application No. 10/782,134

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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